2676.

SUPREME COURT OF THE UNITED STATES.

No. 87.

THE STEAMER REPUBLIC, HER TACKLE, &c., JOSEPH E. MONTGOMERY, RICHARD WILLETT, BENJAMIN E. HARRISON, AND JAMES PHILLIPS, CLAIMANTS AND APPELLANTS,

vs.

JOHN J. ANDERSON, REUBEN L. ANDERSON, AND ERASTUS H. GAYLORD, LIBELLANTS.

APPEAL FROM THE CIRCUIT COURT OF THE U. S. FOR THE DISTRICT OF MISSOURI.

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2677

MISSOURI DISTRICTS, *sct.*

Pleas before the Hon. Robert W. Wells, district judge of the United States for the western district of Missouri, and one of the judges of the Circuit Court of the United States for the districts of Missouri, on the 22d day of October, 1857.

JOHN J. ANDERSON, REUBEN L. ANDERSON, and Erastus H. Gaylord, petitioners and appellees,
vs.
THE STEAMER REPUBLIC, JOSEPH E. MONTGOMERY, and Rebecca, his wife, Richard Willett, Benjamin G. Harrison, and James Phillips, claimants and appellants.

Appeal by Claimants from the Decree of the District Court of United States for eastern district of Missouri.

Be it remembered that heretofore, on the 5th day of October, in the year 1857, come the claimants and appellants in above entitled cause, and filed in the office of the clerk of the circuit court of the United States for the districts of Missouri the following record from district court of United States for eastern district of Missouri.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss.

Be it remembered, that at a special term of the district court of the United States of America, in and for the eastern district of Missouri, begun and holden at the city of St. Louis, in said eastern district, on the fourth day of June, in the year of our Lord eighteen hundred and fifty-seven, the following proceedings took place on said fourth day of June, to wit:

JOHN J. ANDERSON, REUBEN L. ANDERSON, and Erastus H. Gaylord, petitioners,
against
THE STEAMBOAT REPUBLIC, her engines, machinery, tackle, apparel, and furniture. } No. 69.

This day come said petitioners, by John H. Rankin, esq., their proctor, and moved the court for leave to file their petition against said steamboat Republic, her engines, machinery, tackle, apparel, and furniture, and the court thereupon ordered that said petitioners, upon entering into a stipulation for costs according to the rules and practice of this court, should have leave to file their petition, and said petition was thereupon on the same day filed, and is in the words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA.

In the District Court of the United States for the eastern district of Missouri.—In Admiralty.

To the Honorable Samuel Treat, Judge of the District Court of the United States for the eastern district of Missouri:

The petition and complaint of John J. Anderson, Reuben L. Anderson, and Erastus H. Gaylord, intervening for their interest in the steamer Republic, her tackle, apparel, engines and furniture, and against the same, whereof Joseph E. Montgomery lately was master, alleges as follows:

1st. That the petitioners are citizens of the State of Missouri, are copartners in business, under the name, firm, and style of John J. Anderson & Co., engaged in the banking business.

2d. That on the 8th day of May, 1857, the said steamer was owned by Mrs. Rebecca P. Montgomery, of St. Louis, Missouri, Richard Willit, of Louisville, of the State of Kentucky, Benjamin G. Harrison, of the State of Kentucky, and Joseph Kirby, of St. Louis, Missouri.

3d. That on the 8th day of May aforesaid, the said steamer "Republic" was lying at the port of St. Louis, in the State of Missouri, and, as represented by said Joseph Kirby, was about to proceed on a voyage to New Orleans, in the State of Louisiana. That at the date aforesaid said Joseph Kirby was the first clerk of said boat, and owned the fourth part thereof.

4th. That on the 8th day of May aforesaid, the complainants (at the special instance and request of, and under contract with, said Joseph Kirby, then clerk and part owner of said boat, as aforesaid,) supplied, furnished and advanced to said Joseph Kirby, for the use of said boat, and to be used entirely in paying for wood, and other supplies and charges, necessary for the voyage aforesaid, to the amount of two thousand dollars; that said Kirby represented to the petitioners that said money was needed to purchase wood, and pay charges, and purchase supplies for the voyage aforesaid, and for that purpose the same was advanced, and the said Joseph Kirby then and there agreed with complainants that said moneys, $2,000, would be paid to them at the city of New Orleans aforesaid, and that no part thereof has been paid by any one to complainants.

5th. By the laws of the State of Missouri, complainants have a lien on said boat for said two thousand dollars.

6th. That said vessel is now within the district aforesaid, and under seizure by the United States marshal for said district, and has been ordered to be sold by this honorable court in a cause of admiralty and maritime jurisdiction.

7th. That all and singular the premises are true, and within the

admiralty and maritime jurisdiction of this honorable court; wherefore the petitioners pray that they may be allowed to intervene for their interest in said vessel; and that this honorable court will pronounce for their aforesaid demand, and decree that the same be paid out of the proceeds of the sale of said boat, her tackle, apparel and furniture, and that the said owners, and especially the said Joseph Kirby, may be required to answer all the matters aforesaid on oath, as well as all other persons having any interest therein, and that said Kirby, clerk and part owner aforesaid, may be required to answer in writing, and on oath, all and singular the interrogations herewith filed, and for such other and further relief as they in justice ought to receive, and the court is competent to give, in the premises.

JOHN H. RANKIN,
Proctor for Petitioners.

On the 3d day of June, 1857, John J. Anderson, one of the above complainants, makes oath and says that he believes the foregoing petition to be true.

JOHN J. ANDERSON.

Subscribed and sworn to this 4th day of June, 1857, before me.

T. C. REYNOLDS, *Cl'k.*

And on said fourth day of June, in the year hereinbefore mentioned, said petitioners filed their interrogatories to be answered by J. Kirby, under oath, which said interrogatories are in the words and figures following, to wit:

Petitioners' Interrogatories.

Interrogatories propounded to Joseph Kirby by John J. Anderson, Reuben L. Anderson, and Erastus H. Gaylord, comprising the firm of John J. Anderson & Co., complainants in a cause, civil and maritime, in the district court of the United States for the eastern district of Missouri.

1st. On the 8th day of May, 1857, were you not the owner of one undivided fourth part of the steamer Republic, and were you not then first clerk thereof?

2d. Were you not the clerk and financial agent of said boat, and where was she on the day aforesaid?

3d. Did not John J. Anderson & Co., on said 8th day of May, supply, furnish, and advance to you and at your special instance and request, as clerk and part owner, two thousand dollars for the use of said boat?

4th. Did you not state to John J. Anderson above named, when you received said two thousand dollars, that you wanted the same to pay the accruing expenses of the boat aforesaid, and that a part thereof you wanted to use in purchasing wood and other

supplies, and paying charges on the voyage then to be commenced from St. Louis to New Orleans?

5th. Did you not receive, and did not said Anderson advance said two thousand dollars upon the representations as stated in the preceding interrogatory?

6th. Did you not promise said Anderson that the said sum of two thousand dollars should be punctually paid in New Orleans?

7th. Has any part of said sum been paid, and has not the bill of exchange received by said Anderson from you for said $2,000 been protested for non-acceptance, and paid by said John J. Anderson & Co.?

JOHN H. RANKIN, *Proctor.*

And on the said fourth day of June, in the said year of our Lord eighteen hundred and fifty-seven, said petitioners filed in the clerk's office of said court their stipulation for costs, which is in the words and figures following, to wit:

Petitioners' Stipulation.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss.

In the District Court for said United States, in and for said district.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the fourth day of June, in year of our Lord eighteen hundred and fifty-seven, by John J. Anderson, Reuben L. Anderson, and Erastus H. Gaylord, against the steamboat Republic, her tackle, apparel, and furniture, for the reasons and causes in said libel mentioned; and the undersigned stipulators, residents at St. Louis, in said district, said John J. Anderson as principal, and John H. Rankin, resident in said city of St. Louis, in said eastern district of Missouri, as surety, hereby consenting and agreeing that, in case of default or contumacy on the part of said libellants, or said principal or surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands: Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are jointly and severally, bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall abide by the final decree rendered in this cause, and shall pay all such costs and expenses as shall be awarded against them by any interlocutory or final decree therein made by said district court, or (in case of appeal) by the appellate court.

In witness whereof, we hereto severally sign our names, at said

city of St. Louis, the fourth day of June, A. D. eighteen hundred and fifty-seven.

JOHN J. ANDERSON,
JOHN H. RANKIN.

The above stipulation, subscribed and acknowledged by said John J. Anderson and John H. Rrankin, the parties thereto, before me, and approved by me this 4th day of June, A. D. 1857, at my office, in said city.

T. C. REYNOLDS, *Cl'k.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, sct.

John H. Rankin being duly sworn, deposes and says, that he resides as stated in the foregoing stipulation, and is worth the sum of five hundred dollars over and above all his debts and liabilities.

JOHN H. RANKIN.

Subscribed and sworn to by said John H. Rankin, this 4th day of June, A. D. 1857, before me at my said office.

T. C. REYNOLDS, *Clerk.*

And at the same special term hereinafter mentioned of said court, the following proceedings in said cause took place of the fifteenth day of June, in said year of our Lord eighteen hundred and fifty-seven, to wit:

This day appeared John H. Rankin, esq., and filed the answers of Kirby to interrogatories propounded by the libellants or petitioners in this case, and said answers are in the words and figures following, to wit:

Answers of Kirby to Interrogatories.

Answer of Joseph Kirby to the interrogatories propounded to him by John J. Anderson, Reuben L. Anderson, and Erastus H. Gaylord, in a cause, civil and maritime, in the district court of the United States for the eastern district of Missouri.

Answer to first interrogatory. 1st ans. On the 8th day of May, 1857, I was the owner of one undivided fourth part of the steamer Republic.

2d ans. On the 8th day of May, 1857, and for some time prior thereto, I was the clerk and financial agent of said boat.

3d. John J. Anderson & Co., the petitioners in this cause, did advance to me, as clerk and part owner, $2,000 for the use of said boat.

5th answer. I did receive said sum of $2,000 from Anderson, and he paid the same for the steamer Republic.

6th. I did intend that said $2,000 should be paid in New Orleans.

7th. No part of said money received from said John J. Anderson & Co. has been paid.

On the fifteenth day of June, 1857, said Joseph Kirby makes oath and says, that he believes the foregoing answer to be true.

J. KIRBY.

Sworn and subscribed to this the day and year aforesaid.

THO'S C. REYNOLDS, *Cl'k.*

And at the same special term hereinbefore mentioned of said court, the following proceedings took place in said cause on the sixteenth day of June, in the said year of our Lord eighteen hundred and fifty-seven, to wit:

Upon motion of James S. Thomas, esq., proctor of the claimants, Joseph C. Montgomery and others, leave was given the claimants to file their claim, on their giving the usual stipulations for costs; and their stipulation and claim were accordingly filed, and said answer or claim is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Missouri, sct.

To the Honorable Samuel Treat, judge of the district court of the United States, eastern district of Missouri:

The claim, exception, and answer of Joseph E. Montgomery and Rebecca P. his wife, of St. Louis, Missouri, Richard Willett and Benjamin G. Harrison, of Mead county, Kentucky, and James Phillips, of New Albany, in the State of Indiana, to the petition of John J. Anderson, Reuben L. Anderson, and Erastus H. Gaylord against the steamer Republic, her tackle, apparel, and furniture, and against all persons intervening for their interest therein, allege as follows:

1st. That respondents are the true and bona fide owners of seven-eighths of said boat, and no other person is the owner of said interest.

2d. That the first and second articles of said libel are in the main true, except as to the ownership of said boat.

3d. That they are ignorant of the facts alleged in the 3d article of said libel, except that said Kirby was clerk and part owner of said boat.

4th. Respondents are ignorant of the facts alleged in the 4th article of said libel, but are informed that said Kirby did sell to said petitioners a bill of exchange for said sum, payable at New Orleans, which was endorsed by one William Newell. Respondents deny that there was any necessity for obtaining said money if it was obtained for said boat, and deny that it was used for said boat, or that the boat is liable therefor.

5th. That they submit to the court, whether petitioners have a lien by the laws of Missouri?

6th. The allegations in the 6th article are admitted.

7th. Respondents deny that the allegations are true as alleged in the 7th article of said libel.

8th. That the honorable court has no jurisdiction of the matters contained in said libel, the same not being matters of admiralty and maritime jurisdiction, the said petition having been filed to enforce a claim for money advanced which is not averred was used for the purpose for which it is alleged to have been advanced; nor does the petition show a cause for the jurisdiction of this court, and respondents pray the same advantage thereof as if the same were separately and finally pleaded to said petition.

Wherefore the respondents pray this honorable court would be pleased to pronounce against the said petition and condemn the petitioners in costs.

J. E. MONTGOMERY.
THOMAS, SHARP & SAWYER,
Proctors for Respondents.

Subscribed and sworn to by J. E. Montgomery, this 16th day of June, 1857, before me.

T. C. REYNOLDS, *Clerk.*

Claimants' Stipulation.

And said stipulation is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Missouri, sct.

In the District Court of said United States in and for said district.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the sixteenth day of June, in the year of our Lord eighteen hundred and fifty-seven, by John J. Anderson, Reuben L. Anderson and Erastus Gaylord against the steamboat Republic, her engines, machinery, tackle, apparel, and furniture, for the reasons and causes in said libel mentioned; and Joseph E. Montgomery, Rebecca P. Montgomery, Richard Willett, Benjamin G. Harrison, and James Phillips have filed in said court on the sixteenth day of June, in the year of our Lord eighteen hundred and fifty-seven, a claim in said cause, the undersigned stipulators, Joseph E. Montgomery, resident in the city of St. Louis, in said district, as principal, and Henry Ashbrook, jr., resident in said city, in said eastern district of Missouri, as surety, hereby consenting and agreeing that in case of default or contumacy on the part of said complainants, or said principal or surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands: Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may

concern, that the stipulators undersigned shall be and are jointly and severally bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall abide by the final decree rendered in this cause, and shall pay all such costs and expenses as shall be awarded against them by any interlocutory or final decree therein made by said district court, or (in case of appeal) by the appellate court.

In witness whereof, we hereto severally sign our names at said city the sixteenth day of June, A. D. eighteen hundred and fifty-seven.

J. E. MONTGOMERY.
HENRY ASHBROOK.

The above stipulation subscribed and acknowledged by said Montgomery and Ashbrook, the parties thereto, before me, and approved by me this 16th day of June, 1857, at my office in said city.

THOS. C. REYNOLDS,
Clerk of said District Court.

UNITED STATES OF AMERICA,
Eastern District of Missouri.

Henry Ashbrook, jr. being duly sworn, deposes and says, that he resides as stated in the foregoing stipulation, and is worth the sum of five hundred dollars over and above all his debts and liabilities.

HENRY ASHBROOK.

Subscribed and sworn to by said Ashbrook this 16th day of June, A. D. 1857, before me, at my said office.

T. C. REYNOLDS,
Clerk of said District Court.

Hearing.

And on the same day the following proceedings also took place in said cause:

On motion of John H. Rankin, proctor for petitioners, the hearing in this case was ordered. The libel and answer *we* read. William N. Newell was affirmed as a witness for the petitioners and examined; also, Wm. A. Haggarty, Joseph H. Oglesby, and Isaac McPherson. J. Kirby was sworn and examined as a witness for the petitioners; Lamar E. Sube was sworn and examined as a witness for the petitioners; John H. Rankin was examined as a witness for the petitioners after having been duly sworn; Wm. Dyer was sworn upon the voir dire for the petitioners and declared incompetent on account of his interest; Walker R. Carter was sworn and examined as a witness on behalf of the claimants; Thomas Nordike was sworn and examined as a witness for the claimants; James Christy was sworn and examined as a witness

for the petitioners. The petitioners offered in evidence the law of the State of Missouri in regard to the lien upon boats and vessels. The petitioners offered in evidence following bills of exchange, to wit: first of exchange, dated St. Louis, May eighth, eighteen hundred and fifty-seven, payable three days after date to the order of W. N. Newell, and drawn on Messrs. Snapp and Hite, New Orleans, La., by J. Kirby, for two thousand dollars.

On motion of said proctor for petitioners, the case was ordered to be laid over to-morrow.

And at the same special term hereinafter mentioned of said court the following proceedings in said cause took place on the seventeenth day of June, in the said year of our Lord eighteen hundred and fifty-seven:

Upon motion of John H. Rankin, esq., proctor for the petitioners or libellants, it was ordered that the hearing in this case be resumed.

Henry Cheeks was sworn and examined as a witness for the petitioners. The petitioners offered in evidence and filed the release of Wm. N. Newell upon all liability as endorser on the bill of exchange produced in this cause, which release was signed by the petitioners and under their seals. The petitioners produced the bill of exchange described in yesterday's proceedings in this case, and surrendered the same. The court ordered said bill of exchange to be cancelled, which was accordingly done.

The hearing of this cause having been concluded, the court took time to consider of its judgment therein.

The release of Wm. N. Newell by said petitioners is in the words and figures following, to wit:

Release of Newell.

In the District Court of the United States for the eastern district of Missouri.—In Admiralty.

To the Honorable Samuel Treat, Judge of the District Court of the United States for the eastern district of Missouri:

This case was instituted to recover the sum of two thousand dollars, for money advanced by us to the steamboat Republic. We, the petitioners, herein hereby agree to discharge and release Wm. N. Newell from all liability as endorser on the bill of exchange received by us for the advancement aforesaid, which draft is dated May 8th, 1857, drawn by J. Kirby, and directed to Messrs. Snapp and Hite, New Orleans, for $2,000, payable to the order of said Newell for non-acceptance on the 19th day of May, 1857.

In witness whereof, we hereunto set our hands and seals this 16th day of June, 1857.

JOHN J. ANDERSON, [SEAL.]
REUBEN L. ANDERSON, [L. S.]
E. W. GAYLORD. [L. S.]

And at a special term of the district court of the United States of America, in and for the eastern district of Missouri, begun and holden on the seventh day of September, in the year of our Lord eighteen hundred and fifty-seven, at the city of St. Louis, in said eastern district, the following proceedings in said cause took place on said seventh day of September, to wit:

Judgment for Petitioners.

This day come the said petitioners by John H. Rankin, esq., their proctor, and the claimants also came by their proctor, James S. Thomas, esq., and the court did adjudge, order, and decree that the said petitioners had, by the law of the State of Missouri concerning boats and vessels, a lien against the said steamboat Republic, her engines, machinery, tackle, apparel and furniture, at the time of the sale of the same under the order of this court, for the sum of two thousand dollars, with interest thereon, at the rate of six per centum per annum, from the twenty-fifth day of May, in the year of our Lord eighteen hundred and fifty-seven till this day; and the court also adjudges that said petitioners have their costs.

Reference to Commissioners.

The court further ordered that it be referred to Thomas C. Reynolds, esq., as commissioner of this court, to compute the amount of this judgment, and to report thereon with all convenient speed.

Time given to Claimants to Appeal.

And at the same special term last hereinafter mentioned, the following proceedings took place in this cause, on the ninth day of September, in the said year of our Lord eighteen hundred and fifty-seven, to wit:

On motion of James S. Thomas, esq., proctor for the claimants in this cause, the court ordered that said claimants have ten days for time within which to take an appeal from the decree in this cause, on entering into and filing a stipulation in due form in the sum of two hundred and fifty dollars. And at the same special term last hereinbefore mentioned, the following proceedings in this cause took place on the twelfth day of September, in said last herein mentioned year, to wit:

Appellants.

This day came the claimants in this cause, and filed therein their stipulation for appeal. And said stipulation is in the following words and figures, viz:

Stipulation.

District Court of the United States in and for the eastern district of Missouri.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas an appeal has been taken from the decree of this court,

made on the seventh day of September, eighteen hundred and fifty-seven, in a certain cause wherein John J. Anderson, Reuben L. Anderson, and Erastus H. Gaylord were petitioners against the proceeds of the steamboat Republic, her engines, machinery, tackle, apparel and furniture, and Joseph E. Montgomery, Rebecca P. Montgomery, Richard Willett, Benjamin G. Harrison, and James Phillips are claimants, by the said claimants: Now, therefore, Joseph E. Montgomery, Richard Willet, Benjamin G. Harrison, and James W. Phillips as principals, and Joseph H. Oglesby, residing at No. 137 South Fifth street, in the city of St. Louis, in said district, as surety, the stipulators undersigned hereby stipulate in the sum of two hundred and fifty dollars, to pay all damages and costs which shall be awarded against the said appellants by the final decree rendered by the appellate court.

J. E. MONTGOMERY,
RICHARD H. WILLETT,
B. G. HARRISON,
JAS. W. PHILLIPS,
JOS. H. OGLESBY.

Signed and acknowledged before me, this twelfth day of September, A. D. 1857.

T. C. REYNOLDS,
Clerk of the 2d District Court.

EASTERN DISTRICT OF MISSOURI, *ss.*

Joseph H. Oglesby, being duly sworn, deposes and says that he resides as above stated, and is worth the sum of five hundred dollars over and above all his debts and liabilities.

JOSEPH H. OGLESBY.

Sworn to before me, this 12th day of September, A. D. 1857.

T. C. REYNOLDS,
Clerk of 2d District Court.

And at the same special term hereinbefore mentioned, the following proceedings in this cause took place on the fifteenth day of September, in the said last herein mentioned year, to wit:

Commissioner's Report Confirmed.

The report of Thomas C. Reynolds, esq., in pursuance of an order heretofore made in this cause, and directing him, as commissioner of this court, to ascertain and compute the amount due the petitioners under the decree of this court, was presented to the court, and on motion of John H. Rankin, esq., proctor for said petitioners, the court ordered said report to be confirmed.

Judgment.

And on like motion the court adjudged and decreed, that the

amount of the judgment in favor of said petitioners against the said fund, proceeding from the sale of said steamboat Republic, her engines, machinery, tackle, apparel, and furniture, was, at the date of said judgment, to wit, on the seventh day of September, in the year of our Lord eighteen hundred and fifty-seven, two thousand and thirty-four dollars, and that said judgment bear interest at the rate of six per centum per annum. And the court further ordered, that inasmuch as some of the causes in this court against said steamboat Republic, her engines, machinery, tackle, apparel and furniture, and against the proceeds of the sale thereof, have not yet been determined, and said fund may prove insufficient to satisfy in full all the demands established, or to be established, against the same, no order for the payment of said judgment be made until the court shall be further advised in the premises, and said report of said commissioner was thereupon filed, and is in the words and figures following, to wit:

Commissioner's Report.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss.

In the District Court of said United States in and for said district.

In the case No. 69, A. D. 1857, of John J. Anderson, Reuben L. Anderson and Erastus H. Gaylord, libellants, against the steamboat Republic, her engines, machinery, tackle, apparel and furniture. Commissioner's report, in pursuance of a decretal order made in the above entitled cause, on the seventh day of September, in the year of our Lord eighteen hundred and fifty-seven, by which, among other things, it was referred to the undersigned commissioner of said court to ascertain and compute the amount due the libellants on account of the demand in their libel set forth, and to report thereon to this court with all convenient speed.

I, the undersigned, do report, that in accordance with the decree of said court, rendered on said seventh day of September, in the year aforesaid, the said libellants are entitled to, and have, under the law of the State of Missouri concerning boats and vessels, a lien against said steamboat, her engines, machinery, tackle, apparel and furniture, for the following sums, to wit:

For the principal sum of two thousand dollars.....	$2,000
For interest at the rate of six per centum per annum on said sum, from the twenty-first day of May, eighteen hundred and fifty-seven, to said seventh day of September, thirty-four dollars.....	34
Total.....	$2,034

Making the total amount of the judgment of said court in favor

of said libellants on said seventh day of September, two thousand and thirty-four dollars. All of which is respectfully submitted.

THOS. C. REYNOLDS,
Commissioner.

St. Louis, Missouri, 9th Sept., 1857.

And on the sixteenth day of September, in said year of our Lord eighteen hundred and fifty-seven, said claimants in this cause filed in the clerk's office of this court a notice to the clerk thereof, which notice is in the words and figures following, to wit:

Notice of Appeal to Clerk.

District Court of the United States for the eastern district of Missouri.

JOHN J. ANDERSON & Co.
vs.
THE STEAMBOAT REPUBLIC.

SIR: the defendant intends to appeal from the final decree of the court in this case, to Thomas C. Reynolds, esq., clerk; J. S. Thomas, proctor for def't.

And on the said sixteenth day of September, in the said last herein mentioned year, said claimants in this cause filed in the clerk's office of this court a notice, which is in the words and figures following, to wit:

Notice of Appeal to Petitioner's Proctor.

District Court of the United States for the eastern district of Missouri.

JOHN J. ANDERSON & Co.
vs.
STEAMBOAT REPUBLIC.

To JOHN H. RANKIN,
Proctor for Libellants.

GENTLEMEN: The defendant intends to appeal from the final decree of the court in this case.

J. S. THOMAS, *Proctor for Def't.*

Due service of the above notice acknowledged this day of September, 1857.

JOHN H. RANKIN,
Proctor for Libellants.

And at the same special term last hereinbefore mentioned, the following proceedings in this cause took place on the sixteenth day of September, in the year of our Lord eighteen hundred and fifty-seven, to wit:

Order allowing Appeal.

This day came the claimants in this cause, by James S. Thomas, esq., their proctor, and presented to the court their prayer of ap-

peal, and on his motion the court ordered that an appeal be granted in this cause. Thereupon said prayer of appeal was filed, and is in the words and figures following, to wit:

Prayer of Appeal.

District Court of the United States for the eastern district of Missouri.

JOHN J. ANDERSON & Co.
vs.
STEAMBOAT REPUBLIC.

The appeal of the defendant in the above entitled cause.

In this case the libellant's allege that the defendant owed them the sum of two thousand dollars, with interest, for money loaned and advanced to the clerk of the defendant in the month of May, 1857, and that the money was so advanced on the representation of the said clerk that it was needed to pay the wages of the crew, and other necessary expenses of said boat; that the money was needed, and was used for the purposes aforesaid, and that by the law of the State of Missouri they have a lien on said boat for their said demand, and prayed for judgment against said boat, and that it might be sold to satisfy said demand. The claimants, who were the master and part of the owners, filed their answer denying the boat's liability for said demand. The cause came on for hearing in June, 1857, and on the seventh day of September the said district court rendered final judgment against the defendant for said sum, with interest. From which final judgment the defendant takes this its appeal, which it prays may be allowed, to the circuit court of the said United States next to be holden in Missouri. The defendant intends to have the appeal heard on the same pleadings and proofs which were submitted to the said district court, and to ask for a review of said cause and judgment.

THOMAS,
Proctor for Def't.

And on the thirtieth day of September, in the last year hereinbefore mentioned, the clerk of said court filed in his office the report of testimony of witnesses sworn and examined in this cause, which report is in the words and figures following, to wit:

Report of Testimony.—Testimony for Petitioners.

Report of the testimony on the hearing of said cause made by the clerk of said court from the minutes and judge's notes, June 15th, A. D. 1857.

Wm. N. Newell.

Testimony for Petitioners.

Captain Wm. N. Newell testified as follows: (I am endorser on

a bill of exchange given for the amount in this case.) I met Kirby, the clerk of the Republic, on the 8th of May last on the street. He and I went into libellants' office; I told libellants that Kirby wanted to get some two thousand dollars for the Republic. Anderson asked him what kind of money he wanted. Kirby said currency will do; and Anderson asked, can't you use some 3 or $400 of Tennessee money for wood? Kirby said yes, but that he wanted the balance for charges, as he would have rather a slim trip. Anderson replied, if you can use this kind of money I can let you have $2,000. Then Anderson gave the money to be used to buy wood, pay charges, &c., and said he would then let him have money for the boat for those purposes. This was the case in each instance with Anderson, whose transactions with the Republic had amounted off and on to some $33,000.

Cross-examined.

This was the trip the boat was advertised to make, but did not make.

Henry Cheeks.

Henry Cheeks testified as follows: Libellants are parties, (John J. Anderson, Reuben L. Anderson, and Erastus H. Gaylord,) and bankers. Newell had not credit for the amount of the draft in suit here; he might have credit for 3 or $400. This draft would not have been taken for that amount without security. The firm looked to the drawers and endorsers. I am book-keeper with the libellants.

Wm. A. Haggerty.

William A. Haggerty testified as follows: Last May I was in the employ of Haskell & Co. The firm was composed of Steven Haskell and James M. Franciscus. I knew Captain Montgomery and Kirby. Kirby borrowed money from Haskell & Co.: on the 5th of May last $50, on the 8th $500, and on the 14th $400; more for the use of the boat, to pay hands and supplies; the last named amount was procured to pay hands. For these sums notes and due-bills were given; the due-bills were taken up, and a note for $1,000 was given the Haskell & Co. for them; also a note of $400. Kirby had often procured money from Haskell & Co. before for the Republic. He began in October last, and continued to do so at nearly every trip of the Republic. I never saw Captain Montgomery that I know of. The notes offered in evidence in this case are signed by Kirby in his handwriting. Kirby was clerk of the Republic.

Cross-examined.

Kirby said, with reference to the $400, that he wanted small bank notes to pay hands; with regard to the $1,000 he did not say for what particular use he wanted the amount. I did not know

who were agents of the Republic, and was under the impression that Dyer & McCord were agents. I did not know that any inquiry was made of them, or of Captain Montgomery, or of the owners of the boat. It was always here when loans were made to Kirby for it.

Bill of Exchange.

The bill of exchange produced in evidence for the petitioners is in the words and figures following, to wit:

Exchange for $2,000.

ST. LOUIS, *May 8th*, 1857.

Three days after sight of this first of exchange, (second unpaid,) pay to the order of Wm. N. Newell two thousand dollars, value received, and charge the same to account to Messrs. Snapp & Hite.

J. KIRBY.

New Orleans, La.

And on said bill of exchange are the following endorsements:

Wm. N. Newell pay to the order of Brown, Johnson & Co.

JOHN J. ANDERSON & CO.

J. H. Oglesby.

Joseph H. Oglesby testified as follows: I know Captain Montgomery and Kirby; money was borrowed here frequently by them. I advanced to Captain Montgomery and Kirby each for the boat; it was always stated by them to be for the boat. I have generally advanced on bills of exchange, and almost always against the captain's signature to the bill. On the 5th of May I advanced to Kirby some money payable in two days, and did not think Captain Montgomery knew of it; both Captain Montgomery and Kirby applied to me. I generally furnished the money to the clerk, Kirby, on the captain's signature to a bill of exchange.

Cross-examined.

So far as receipts and disbursements are concerned in the current business the clerk is the financial agent generally of a boat; both captain and clerk of the Republic had applied to me for money. I know the custom of raising money only so far as my habit is concerned.

W. R. Carter.

Walter R. Carter testified as follows: I have known the Republic, and her owners were Rebecca P. Montgomery, wife of Captain Montgomery, Joseph Kirby, Richard Willett, and Benjamin G. Harrison; Willett and Harrison resided in Kentucky, Captain Montgomery and wife here. I don't know where Kirby resided. I knew of no one acting financially for that boat except Kirby. Kirby acted in money matters with me. I suppose Captain Montgomery knew of this, but I cannot say if he did so in all cases. I

have seen some drafts on account of that boat with Kirby's name alone on them, and some with Captain Montgomery's also. Have seen some drafts on Captain Montgomery by Kirby on account of the boat.

Cross-examined.

Kirby did not pay me anything on the Republic's last trip. I don't recollect any draft with Captain Montgomery's name alone on it. The clerk handles all money for a boat, attends to the finances, and is her financial agent for legitimate business. I don't know that Kirby drew as clerk except for the boat.

Issac McPherson.

Issac McPherson testified as follows: I know Kirby, but not Captain Montgomery. Kirby, at the time of his borrowing money of Wm. L. Ewing & Co., stated on the last time, May 8th, that it was to pay off the crew. The last sum lent him was two thousand dollars; that firm had lent him money three or four times before. He usually gave drafts, signed by himself or Captain Montgomery. They were paid except the last. I never knew any one as financial agent of the Republic in all their operations except Kirby.

Cross-examined.

I don't know if Captain Montgomery knew of these negotiations; nor do I know that the bills were presented to him for acceptance. I don't know what he did with the money.

Wm. N. Newel recalled.

Wm. N. Newel testified as follows: I know Kirby and Captain Montgomery. I never knew any financial agent of the Republic except Kirby; I heard Captain Montgomery acknowledge the fact in one instance. He said Kirby wanted to raise two or three thousand dollars for the boat, and he asked me to wait a few minutes for Kirby, and go with him to the broker's office. This happened several times. I went with Kirby, and he got the money by my putting my name to the paper. I went with him to the boat, and saw him pay money to the hands. I have endorsed for him at times to the amount of 32 or $33,000. I am endorser on two protested drafts of his for $2,000 each. By the custom-house papers, Captain Montgomery's wife was an owner of the Republic.

Re-examined.

Captain Montgomery was master of the Republic. Captain Montgomery did not represent for what the money he desired to raise as above stated was wanted, but Kirby did represent that it was to buy wood, pay hands, &c.

Jos. Kirby.

Joseph Kirby testified as follows: I was the clerk of the Repub-

lic from the time she came out; I have been part owner since August last; I have mostly attended to raising money for her; Captain Montgomery was acquainted with the general fact; I did not speak to him every time I raised money; I never saw the other owners at all about it; Captain Montgomery never told me not to raise money. I borrowed money of Haskell & Co.; part of it was paid to the crew. A portion of each of the first two sums borrowed, of $500 each, was so paid; I procured the money for that purpose. Some was so paid out of each sum borrowed of Haskell & Co., and the balance I kept myself. The wages account on a round trip amounted to over $2,000, and this was not paid every trip.

Cross-examined.

I paid out for wages on the last trip it may be $1,000—it may be $1,500; I cannot say exactly. I paid some hands as late as the fourteenth of this month. On that day I paid Stewart, and two strikers. The boat had some money here. I paid over $1,000 on the voyage for wood. The freight receipts were $3,000. The freight money was used to take up acceptances for the boat. I got from 4th to 14th May, the following sums: $4,000 from Newell; $2,000 Ewing; $1,400 Haskell; $1,000 Oglesby; $500 Wates; $1,500 Dwyer & McCord; $1,500 Graham & Ashbrook.

I paid the captain's acceptance with Benoist & Co. for $3,000; Snapp & Hite's draft for $6,000; my draft on Carter, which he would not accept, $3,000 for the boat's account; to Tesson & Dangen $1,075; a draft on Newell. Another acceptance of Captain Montgomery with Tesson & Dangen was not paid up. I paid $3,000 on Allen's draft; my impression was that the $3,000 were for the captain's acceptance. Snapp & Hite were the agents of the boat, and had drawn an accommodation bill or two. I had drawn on them, and they had drawn on me. Willett was 2d clerk, and got some money, acting for me, from Snapp & Hite; I cannot say how the account stood between us. I have not stated that this $6,000 was for Snapp & Hite's individual account, but I did say I thought hey were in debt to us. Harrison was pilot; Harrison, Willett, myself, Phillips (engineer) and Captain Montgomery were part owners and were on the boat. The last trip was not posted; there were unsettled accounts with Snapp & Hite. I did make a statement about indebtedness, but can't say what amount I named; it was a rough estimate*mation*, because some accounts are not allowed

Re-examined.

I have not got the books of the boat, nor the bills of exchange. There was some 13, 14 or 15 hundreds raised by me for the captain to pay towards his interest; I have been kiting all the time; I did this business myself, and can't say that anything was said to other owners about it; the books were open to all; the boat has made

money. Dwyer & McCord were authorized to draw and accept for it; the old owners were indebted from $9,000 to $11,000; part of it was kited for; the individual owners did not attempt to carry that indebtedness, but it was carried by the boat; I bought in with Walker R. Carter last August for ⅛ of the boat at the price of $5,000; only $1,000 was kited for; repairs were going on when I bought, and they amounted to over $10,000, which is to be added to the former indebtedness, making whole indebtedness then from 19 to $21,000. I estimate the net profits $12,000 for the whole time.

Petitioners rest.

Testimony for Claimants.—Joseph Kirby recalled.

Evidence for claimants and respondents, 16 June, 1857.

Mr. Kirby recalled for cross-examination. This is a statement of the condition of the boat made by me, leaving out Snapp & Hite's and some other accounts not yet rendered. (Here a paper was shown to witness.) It was made out for the owners. All the business is not in it; it was intended as a general statement; this statement would show the net profits to be $14,487; the indebtedness (bills payable, and cash,) $3,164, not including Snapp & Hite's demands, and Captain Montgomery's reclamation, &c. This was made out at the instance of Captain Montgomery. The exchange account was not made up. This does not show the true state of affairs. I did not make explanation about outstanding demands; I rendered to Captain Carter a duplicate statement, considering him an owner at the time. The indebtedness on May 6th, and afterwards, was—

To Carter $2,161 83; to Haskell & Co., $1,400; to Relfe & Co., $285 53; to Shanon, $1,377 90; to Tinkman & Co., $209 98; to Ashbrook & Co., $1,500; to Ewing & Co., $2,000; to Anderson & Co., $2,000; to Snapp & Hite, ($2,000;) to Darby & Co., $2,000; to Dayle & Co., ($38.00;) to Tillman & Co., ($24.00;) to Pomeroy & Co., ($143 44;) to Jurte & Co., $400.37; to Oglesby, $3,100; to Watts, $500; to Dwyer & McCord, $3,500; to Tesson & Co., $2,400; to Johnson & Co., $1,300.

All these are still outstanding.

Re-examined.

A bill of exchange was drawn in favor of Wates by Kirby, and accepted by Captain Montgomery, for $510. Captain Montgomery understood that Snapp & Hite's account was unsettled.

L. E. Suber.

L. E. Suber testified as follows: I am teller at Tesson & Danjen's banking-house. Some bills cashed at our house were drawn by Kirby or Captain Montgomery; they were paid. Captain Montgomery came to our office to see if we had any of the boat's paper.

J. H. Rankin.

J. H. Rankin testified as follows: I talked with Captain Montgomery about Snapp & Hite's account; he said it was all right except one item of $2,000, of which he knew nothing.

Captain Dwyer.

Captain Dwyer, sworn on his voir dire, testified as follows: I have a deed of trust for ⅜ of the Republic to secure a claim my firm has for $3,500. I have no other interest in the boat. (Captain Dwyer was declared incompetent to testify.)

W. R. Carter recalled.

Captain Carter recalled. Either Kirby or Captain Montgomery handed me the statement of May 6th. Kirby said there were some things not in it, and some discrepancies between it and the true condition of affairs. The boat has had several agents here. Dwyer and McCord were the principal agents.

Cross-examined.

Newell was also agent. I wanted a statement, because I was endorser for Kirby.

Thos. Nordike.

Thomas Nordike testified as follows: The Republic left New Orleans last trip on the 25th of April, and arrived here May the 4th; the crew were paid off on the evening of the 5th of May. I was mate; it was my duty to be at the payment, and give the names of the crew. The wages were $30 per month for each hand; there were 38 firemen and deck hands for ten days, partly; I also paid off the laborers on the 5th of May. The cabin boys were paid about the 14th of May. Kirby remained on the boat until the afternoon of the 14th. On the previous trip and down Kirby did not start with us, but came down on the Swann.

W. N. Newell recalled.

Captain Newell testified as follows: The money obtained from Anderson was on the 8th, from Darby and Barksdale on the 9th May; it was on the previous trip that Captain Montgomery asked to go with Kirby and raise money, and Kirby remained behind on that trip to attend to liabilities of the boat, and went down on the Swann, and I went and got money from Anderson; this was before the boat left; she left the next day.

Rebuttal—J. Christy.

Evidence in rebuttal for petitioners.

James Christy testified as follows: I am partner in the house of L. H. Benoist & Co. On the last trip of Republic $9,000 of her paper were maturing at our house; $6,000 was paid in cash by

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Kirby; for the balance we took two drafts of $1,500 each—one endorsed by Ashbrook & Co., the other by Dwyer & McCord; that paid the drafts drawn by Kirby on Captain Montgomery, and accepted by him; some were drawn by Captain Montgomery on Kirby; some were drawn by Snapp & Hite on Kirby, as clerk, and accepted by him. The one drawn by Kirby on Captain Montgomery, and accepted by him, for $3,000, was paid by Kirby on the 8th of May last. We had been negotiating for her for five trips, and paid her $34,000; the drafts were drawn and accepted in the manner stated. Snapp & Hite drew back for $2,500 to meet that amount of drafts sent to New Orleans for collection. The whole amount of Snapp & Hite's drafts was $6,000 on the last trip of the Republic; the other or third draft was for $3,500 (drawn on Kirby.) Every draft drawn by Kirby on Captain Montgomery through us was accepted by Captain Montgomery. For three trips an acceptance for $3,000 by Captain Montgomery passed through our house.

Jos. Kirby recalled.

Jos. Kirby re-examined, testified as follows: I didn't know what the last draft for $3,500 by Snapp & Hite was for; I suppose it was to take up some paper of the boat.

Missouri Boat Ac't.

The Missouri boat account offered in evidence by Haskell & Co. was an act of the general assembly of the State of Missouri entitled "An act concerning boats and vessels," approved 29th November, 1855, and constituting Chapter XX of the revised statutes of said State for 1855.

The above constituted all the evidence in this cause, except the written release of Kirby by the petitioners, John J. Anderson & Co., on file in this cause.

THOS. C. REYNOLDS,
Clerk of said District Court.

St. Louis, Mo., 30 September, 1857.

End of transcript relating to case No. 69.

Be it remembered, that at a stated general term of the district court of the United States of America, in and for the eastern district of Missouri, begun and held at the city of St. Louis, in said eastern district, on the eighteenth day of May, in the year of our Lord eighteen hundred and fifty-seven, the following proceedings took place upon the second day of June, in said year, to wit:

Order of Sale.

J. Milton Relf and J. Sidney Relf, Libellants, ag'st The Steamboat Republic, her engines, machinery, tackle, apparel, and furniture.	And in the matter of the steamboat Republic, &c.

This day came said libellants, by their proctors, Sanford B. Kellog, esq., and moved for the sale of said steamboat Republic, her engines, tackle, machinery, apparel, and furniture; and James S. Thomas, esq., proctor for the complainants in this and all the other cases against said steamboat, consenting on their part, and no one objecting, the court ordered that said steamboat, with her engines, machinery, tackle, apparel, and furniture, be sold by the marshal, on ten days' public notice of the time, place, and terms of sale, given by advertisements published in three newspapers published in the city of St. Louis; that the terms of the sale be, one-fourth of the payment money in cash, one-fourth in four months, one-fourth in eight months, and the other fourth in twelve months; the purchaser giving negotiable promissory notes bearing interest at the rate of six per cent. per year for the deferred payments, with two endorsers of undoubted responsibility; and on like motion the court ordered that a venditioni exponas be accordingly issued; the court also ordered that the marshal, on said sale, bring the proceeds thereof into this court, and pay the same to the clerk thereof.

And accordingly, on the same day, a venditioni exponas was issued in the following words, to wit:

Venditioni Exponas.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss.

The President of the United States of America, to the Marshal of the eastern district of Missouri, greeting:

Whereas a libel was filed in the district court of the United States for the eastern district of Missouri, on the 27th day of May, in the year of our Lord eighteen hundred and fifty-seven, by J. Milton Relf and J. Sidney Relf, against the steamboat Republic, her engines, tackle, apparel, and furniture, praying that the same may be condemned and sold to answer the prayer of said libellants:

And whereas the said steamboat, her engines, tackle, apparel, and furniture have been attached by process issued out of the said district court, in pursuance of the said libel, and are now in custody by virtue thereof, and such proceedings have been thereupon had, that by the interlocutory sentence and decree of the said court in this cause made and pronounced on the first day of June, in the year aforesaid, it was ordered that the said steamboat, her engines, tackle, apparel, and furniture be sold by you, the said marshal, on ten days' public notice of the time, place, and terms of sale, given by advertisements in three newspapers published in the city of St. Louis; that the terms of said sale be one-fourth cash, one-fourth in four months, one-fourth in eight months, and the other fourth in twelve months, the purchaser giving negotiable promissory notes

bearing interest at the rate of six per cent. per year for the deferred payments, with two endorsers of undoubted responsibility:

Therefore you, the said marshal, are hereby commanded to cause the said steamboat Republic, her engines, tackle, apparel, and furniture, to be sold, in manner and form, upon the notice and on the terms and conditions as has been ordered by said district court as hereinbefore set forth, and pay the same to the clerk thereof; and have you then and there this writ, with an account of your proceedings thereon.

Witness the Honorable Samuel Treat, judge of the United States for the eastern district of Missouri, this second day of June, in the year of our Lord eighteen hundred and fifty-seven.

Issued at my office, in the city of St. Louis, Missouri, under [SEAL.] the seal of said court, the day and year last above written.

THOS. C. REYNOLDS,
Clerk of said District Court.

And in execution of venditioni exponas further proceedings took place on the 23d day of said month of June, as follows, before said court:

This day, Thomas S. Bryant, esq., the marshal, acknowledged the deed of sale of the steamboat Republic, her engines, tackle, machinery, apparel, and furniture, to William Hart, the sole purchaser thereof; said marshal also brought into court and paid to the clerk thereof the proceeds of said sale. And on the seventh day of July next, as follows:

Marshal's Return on Venditioni Exponas.

The marshal this day returned into court the venditioni exponas heretofore issued in this case, with the return of his proceedings thereon, which is as follows:

I hereby certify that, in obedience to the within writ of venditioni exponas, I did, on the 15th day of June, A. D. 1857, proceed to sell the said steamer Republic, together with her engines, machinery, tackle, apparel, and furniture, at the port of St. Louis, Missouri, first giving public notice of the time, place, and terms of sale, by advertisements printed in three newspapers published in the city of St. Louis, Mo., viz: Republican, Leader, and Herald.

And I further certify that William Hart, of New Albany, State of Indiana, being the highest and best bidder, the same was stricken off to him for twenty-six thousand two hundred and fifty dollars, on the following terms, to wit: one-fourth cash, one-fourth in four months, one-fourth in eight months, and the remaining fourth in twelve months; and the said William Hart having fully complied with the terms of said sale by paying in cash one-fourth part of said purchase, and giving negotiable promissory notes, with two good and sufficient endorsers thereon, for each of the said deferred

payments, with six per cent. per annum on each said notes, the said steamer Republic was conveyed to him, the William Hart, by deed or bill of sale, acknowledged by me before the United States district court for the eastern district of Missouri, on the 23d day of June, 1857.

THOMAS S. BRYANT,
U. S. Marshal Eastern District of Missouri.

Advertisements.

And s'd advertisement to said return annexed is as follows, to wit:

United States Marshal's Sale.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss.

J. MILTON RELF and J. SIDNEY RELF ag'st STEAMER REPUBLIC and owners. } In Admiralty.

In Admiralty.—Whereas, by a writ of venditioni exponas, issued from the office of the clerk of the district court of the United States for the eastern district of Missouri, by order of said court, on the second day of June, 1857, and to me directed, in the above entitled case in admiralty, I am directed by said writ, as marshal of said eastern district of Missouri, to sell the said steamer Republic, with her engines, tackle, apparel, and furniture, at public auction, in said district, first giving public notice of the time, place, and terms of sale, at least ten days previous to the day of said sale, by advertisement in three newspapers published in the city of St. Louis, Missouri: I, therefore, the said marshal, hereby give notice that I will, on Monday, the 15th day of June, A. D. 1857, at public sale, and by public auction, sell to the highest bidder the steamer Republic, her engines, machinery, tackle, apparel, and furniture, at the levee at or near the foot of Biddle street, in the city of St. Louis, Missouri, between the hours of one o'clock p. m. and five o'clock p. m., (commencing at 2 o'clock p. m.,) on the following terms, to wit: one-fourth cash, one-fourth in four months, one-fourth in eight months, and the remaining fourth in twelve months, the purchaser giving negotiable promissory notes, bearing interest at the rate of six per cent. per year, for the deferred payments, with two endorsers of undoubted responsibility.

THOMAS S. BRYANT,
U. S. Marshal, Eastern District of Missouri.

UNITED STATES MARSHAL'S OFFICE,
Eastern District of Missouri, St. Louis, Mo., June 2d, 1857.

Clerk's Certificate.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss.

In the District Court of said United States in and for said district.

I, the undersigned, clerk of s'd court, hereby certify the writings hereto annexed to be true copies of the original final records in case No. 69, A. D. 1857, of John J. Anderson, Reuben L. Anderson, and Erastus H. Gaylord, petitioners, against the steamboat Republic, her engines, machinery, tackle, apparel, and furniture; and in the matter of said steamboat sale, so far as said final records can be now made up from the proceedings in said case and said matter up to this date; also of all the papers referred to in said final records, as fully as the same remain on file and of record in my office.

In witness wereof I hereunto sign my name and affix the seal of said court, at my office in the city of St. Louis, in said district, this third day of October, in the year of our Lord eighteen hundred and fifty-seven. [SEAL.]

THOS. C. REYNOLDS,
Clerk of said Court.

And afterwards, at the October term of the United States circuit court for the district of Missouri, on Thursday, the 22d day of October, 1857, was had the following proceedings, (viz:)

Agreement Filed.

JOHN J. ANDERSON & Co., Libellant, ag'st STEAMER REPUBLIC and owners, intervening, Respondents. } Appeal from the District Court, eastern district.

This day came the parties, by their proctors, and file an agreement, in writing, as to testimony to be used on trial of this appeal, which agreement is in the words and figures following, to wit:

Agreement.

THE STEAMER REPUBLIC, Appellant, ag'st JOHN J. ANDERSON & Co., Appellees. } United States Circuit Court, on appeal, &c.

It is hereby stipulated and agreed, that in addition to the testimony of Henry Cheeks, reported by the clerk of the U. S. district court, said Cheeks stated that the libellants would not have taken the draft mentioned in this case on the credit of the endorser or drawer; that they would not have taken said draft at all, had they not supposed that they had a lien on the vessel for this advancement, but that they usually take drafts on the credit of the drawer and endorser.

And it is agreed, that in addition to the testimony of Joseph Kirby, reported by said clerk, said Kirby stated that when he borrowed the money of libellants which they lent to him, he represented to them that said funds were needed to purchase wood, pay charges on freight for the boat, and to procure supplies for her.

It is further agreed, that at the time when said Kirby and William N. Newell procured the loan from libellants for said boat, that said William N. Newell was one of the agents of said boat.

The appellees admit that, on the trial of the cause in the court below, the appellant produced a balance-sheet, made out by said Kirby a few days after the boat arrived at St. Louis, on her last trip, at the request of the owners of said boat, of the boat's business, in which it appeared that the whole indebtedness of the boat at the date of the balance-sheet, about 6th May, was, say $6,000; but that said Kirby told said owners that it was not entirely correct.

And that the above-stated additional testimony may be used by either party, as if the same were incorporated in said report.

JOHH H. RANKIN,
For Appellees.
THOMAS & SHARP,
For Appellants.

Judgment.

And afterwards, at the October term, 1857, of the United States circuit court for the district of Missouri, on Thursday, the 22d day of October, was had the following proceedings, viz:

JOHN J. ANDERSON & Co., Libellants, agst.
STEAMER REPUBLIC and owners, intervening, Respondents.

Appeal from District Court eastern district.

And now at this day come the parties, by their advocates, and this cause having been brought on for hearing by s'd advocates, upon the record of the proceedings in the district court of the United States for the eastern district of Missouri, and upon the agreement and admission as filed, as to further evidence, and the court, after examining such record and evidence, and hearing the arguments of the respective advocates for said libellants and respondents, and being fully advised in the premises, do now finally adjudge, order, and decree, that the decree of said district court be and the same is hereby affirmed, and that said respondents, appellants, and their sureties in the appeal bond, pay the costs of this appeal, and do further order and decree that this cause be remanded to s'd district court for all further and necessary proceedings, in order fully to carry into effect s'd decree.

Mem.—His honor judge Treat did not sit or take part in the hearing of this cause.

And afterwards, at the October term, 1857, of the United States circuit court for the districts of Missouri, on Saturday, the 24th day of October, was had the following proceedings, to wit:

JOHN J. ANDERSON & Co., Libellants, agst.
STEAMER REPUBLIC and owners, intervening, Respondents.

Appeal from District Court eastern district.

This day came again the respondents, by their advocates, and prayed an appeal from the decree rendered in this cause to the Supreme Court of the United States, which is allowed, and s'd respondents ordered to enter into bond with surety, to be approved by one of the judges of this court, within ten days from this day, in the sum of five hundred dollars, conditioned to pay all damages and costs which may accrue in consequence of the granting of such appeal; which appeal bond is in words and figures as follows, to wit:

Circuit Court of the United States for the districts of Missouri.

THE STEAMER REPUBLIC, her tackle, &c., JOSEPH E. MONTGOMERY, RICHARD WILLETT, BENJAMIN G. HARRISON, JAMES PHILLIPS, Claimants and Appellants, agst.
JOHN J. ANDERSON, REUBEN L. ANDERSON, and ERASTUS H. GAYLORD, Libellants and Appellees.

Know all men by these presents, that I, Mark Leavenworth, of the city of St. Louis, Missouri, am held and firmly bound unto John J. Anderson, Reuben L. Anderson, and Erastus H. Gaylord, in the sum of five hundred dollars, for the payment of which, well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal and dated this second day of November, in the year of our Lord one thousand eight hundred and fifty-seven. Whereas the above named claimants and appellants have prosecuted an appeal to the Supreme Court of the United States at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the districts of Missouri: Now the condition of this obligation is such, that if the above named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall remain and be in full force and virtue.

MARK LEAVENWORTH. [L. S.]